

INTERLOCAL CONTRACT FOR USE OF HENSEL PARK

This "INTERLOCAL CONTRACT FOR USE OF HENSEL PARK" ("Agreement") is made and entered into pursuant to Texas Government Code, Chapter 791, the Interlocal Cooperation Act, and is by and between **TEXAS A&M UNIVERSITY**, (hereafter referred to as "**TAMU**"), a member of THE TEXAS A&M UNIVERSITY SYSTEM, an agency of the State of Texas, and **THE CITY OF COLLEGE STATION** (hereafter referred to as "**COLLEGE STATION**"), a Texas Home Rule Municipal Corporation.

PURPOSE

WHEREAS, CHAPTER 791 of the TEXAS GOVERNMENT CODE, also known as the INTERLOCAL COOPERATION ACT, authorizes local governments and state agencies to contract with each other to provide a governmental function or service that each Party to the Agreement is authorized to perform individually and in which the contracting Parties are mutually interested, such as administrative functions, planning, parks and recreation and engineering;

WHEREAS, **COLLEGE STATION** is a Home-Rule Municipal Corporation organized under the laws of Texas and is authorized to enter into this Agreement pursuant to ARTICLE II, SECTION 5 of its CITY CHARTER;

WHEREAS, **TAMU** and **COLLEGE STATION** represent that each is independently authorized to perform the functions contemplated by this Agreement;

WHEREAS, **TAMU** owns property located in the "Northgate" area, situated on South College Drive, College Station, Brazos County, Texas, and commonly referred to as "HENSEL PARK";

WHEREAS, **COLLEGE STATION** has owned and maintained playground equipment in HENSEL PARK since 1985;

WHEREAS, **TAMU** has agreed to permit **COLLEGE STATION** to replace the existing playground equipment with new playground equipment;

WHEREAS, **TAMU** and **COLLEGE STATION** agree that a playground in HENSEL PARK benefits **TAMU**, **COLLEGE STATION**, and the community;

WHEREAS, **TAMU** and **COLLEGE STATION** do not intend, by entering into this Agreement, to create a joint enterprise whereby **COLLEGE STATION** shares dual control with **TAMU** of HENSEL PARK, which is to remain solely owned and controlled by **TAMU**; and

WHEREAS, **COLLEGE STATION** has sufficient funds available from current revenues to fund the purchase and installation of new playground equipment in HENSEL PARK.

NOW, THEREFORE, in fulfillment of the duties, obligations, and covenants contained in this Agreement, **TAMU** and **COLLEGE STATION** agree as follows:

ARTICLE 1
DUTIES

1.01 COLLEGE STATION will design, bid and manage the construction project for the removal of existing playground equipment and the installation of new playground equipment as described herein. **COLLEGE STATION** shall pay all costs associated with the construction project. Specifically, **COLLEGE STATION** will perform the following:

- A. Removal of the existing playground equipment installed on HENSEL PARK within six (6) months after commencement of this Agreement; such playground equipment being the blue and orange multi-play unit including posts, decks and slide.
- B. Placement and installation of the new playground equipment consisting of decks, climber, railings, slides and a separate swing set.

1.02 COLLEGE STATION shall repair and maintain the newly installed playground equipment at HENSEL PARK in the same manner and to the same standard as set out by city policy for all **COLLEGE STATION** playgrounds;

1.03 COLLEGE STATION shall maintain that portion of HENSEL PARK that consists of the surface area upon which the newly installed playground equipment described above is located, including:

- A. The octagonal surface area below the playground equipment measuring approximately 50' x 56' and surrounded by concrete curbing; and
- B. The rectangular surface area below the swingset measuring approximately 32' x 36'.

This property is more particularly depicted as the octagonal and rectangular shapes located within the shaded area on EXHIBIT "A" which is attached hereto and incorporated by reference for all purposes. Further, **COLLEGE STATION** will maintain two (2) 20' diameter wooden shelters constructed upon concrete slabs and located on the west side of the HENSEL PARK parking lot.

1.04 TAMU shall be solely responsible for the care, control and maintenance of HENSEL PARK other than that property described hereinabove, which is to be cared for and maintained by **COLLEGE STATION**.

1.05 Neither Party shall have the right to direct or control the conduct of the other Party with respect to the duties and obligations of each party under the terms of this Agreement.

1.06 Surface Only: **COLLEGE STATION** expressly understands and accepts that this Agreement grants to **COLLEGE STATION** the non-exclusive use of the surface only of HENSEL PARK for the sole purpose to install, repair and maintain the playground equipment and to maintain the surface area depicted in EXHIBIT "A". **COLLEGE STATION** does not have the right to disturb the subsurface of HENSEL PARK, except to the extent necessary to remove, install, or maintain the playground equipment and other improvements authorized by **TAMU**. **COLLEGE STATION** does not have the right to direct or control **TAMU** concerning HENSEL PARK other than as provided herein.

Any damage caused to the surface and/or subsurface of HENSEL PARK by COLLEGE STATION's removal, installation, or maintenance of the playground equipment will be repaired by COLLEGE STATION, with repair commencing within fifteen (15) calendar days of the damage.

ARTICLE 2

TERM

2.01 Fixed Term: This Agreement commences upon the date the Agreement is fully executed and expires May 1, 2008, unless terminated sooner pursuant to this Agreement.

2.02 Early Termination: Either party can terminate this Agreement before the expiration of the Fixed Term, by sending the other party thirty (30) calendar days written notice of intent to terminate, sent pursuant to Section 5.01 of this Agreement.

2.03 Expiration, Cancellation or Termination: Upon the expiration, cancellation, or termination for cause, of this Agreement, TAMU may elect one of the courses of action listed in Section 4.02 as "TAMU Remedies".

ARTICLE 3

USE

3.01 Change in Use: TAMU reserves the right to change the use of HENSEL PARK at any time during this Agreement upon thirty (30) calendar days written notice to COLLEGE STATION. If such change in use results in TAMU's use of the Premises in a manner inconsistent with the existence and use of the playground equipment, this Agreement will terminate.

3.02 Security: COLLEGE STATION, its employees, agents and representatives agree to abide by and cooperate with TAMU in the enforcement and implementation of applicable park security regulations and measures.

ARTICLE 4

TERMINATION OF AGREEMENT

4.01 Default by TAMU: In the event of default by TAMU of any material duty or obligation of this Agreement, COLLEGE STATION will give TAMU written notice to correct such default. If the default continues for thirty (30) calendar days after TAMU's receipt of such notice (or if such default cannot reasonably be cured within such thirty (30) day period, TAMU fails to commence the cure of such default within such thirty (30) day period, or thereafter fails to diligently pursue such efforts to completion), COLLEGE STATION may terminate this Agreement by thirty (30) calendar days written notice to TAMU.

4.02 Default by COLLEGE STATION: In the event of default by COLLEGE STATION of any material duty or obligation of this Agreement, TAMU will give COLLEGE STATION written notice to correct such default. If the default continues for thirty (30) calendar days after COLLEGE STATION's receipt of such notice (or if such default cannot reasonably be cured within such thirty (30) day period,

COLLEGE STATION fails to commence the cure of such default within such thirty (30) day period, or thereafter fails to diligently pursue such efforts to completion), **TAMU** may terminate this Agreement by thirty (30) calendar days written notice to **COLLEGE STATION**.

TAMU Remedies: In the event this Agreement is terminated by **TAMU** due to default by **COLLEGE STATION**, **TAMU**, at its sole option, may elect one of the following:

- A. Require **COLLEGE STATION** to remove any improvements and/or playground equipment placed on **HENSEL PARK** by **COLLEGE STATION**, whether affixed or not, and restore **HENSEL PARK** to as near-as or same-as condition existing at the commencement of this Lease, OR
- B. Require **COLLEGE STATION** to grant, transfer, assign, and vest in **TAMU**, all title, right, interest, and possession in the playground equipment listed herein.

If **TAMU** elects to retain the playground equipment, **TAMU** will pay **COLLEGE STATION** for a percentage of the total cost of each improvement erected or constructed on the property at the rate and percentage specified in Exhibit "B". Such payment will be tendered by **TAMU** no later than thirty (30) calendar days after **TAMU** has notified **COLLEGE STATION** of **TAMU**'s intent to retain possession of the equipment.

Within thirty (30) calendar days after **TAMU** has tendered payment, **COLLEGE STATION** will deliver to **TAMU** a Bill of Sale for the equipment.

ARTICLE 5 **MISCELLANEOUS**

5.01 Notices: Notices required under this Agreement may be given by United States Postal Service regular surface mail, certified mail, registered mail, or overnight delivery, or hand delivery. Delivery is deemed made when a notice is deposited into a USPS mail receptacle, deposited with an overnight carrier, or hand delivered. **TAMU** and/or **COLLEGE STATION** can change the notice address by sending the other party a notice of the new address. Notices should be addressed as follows:

TAMU:

Director
Department of Student Activities Texas A&M University
John J. Koldus Bldg., Ste. 125
1236 TAMU
College Station, Texas 77843-1236
Attn: Dr. Kevin Jackson
Tel: 979-845-1133
Fax: 979-847-8854
email: student-activities@tamu.edu

with copy to:

Associate Vice President for Finance
Texas A&M University
TAMU 11 81
College Station, Texas 77843
Attn: Dr. Richard L. Floyd

Assistant Vice Chancellor and
Director of Real Estate
System Real Estate Office
John B. Connally Bldg., Ste. 519
310 Tarrow Dr.
College Station, Texas 77840-7896

COLLEGE STATION: Park and Recreation
City of College Station
P.O. Box 9960
College Station, Texas 77842
Attn: Steve Beachy, Director

5.02 Assignment: COLLEGE STATION has no right to assign, sublet, or in any manner transfer, this Agreement without the prior written consent of TAMU. Any attempted assignment of transfer without such consent will be void. Consent by TAMU to one assignment or transfer will not operate to exhaust TAMU's rights, nor will such consent void either Party's duties, obligations, and liability for performance of this Agreement.

5.03 INDEMNIFICATION: Subject to the limitations as to damages and liability under the Texas Tort Claims Act or the Texas Recreational Use Statute, and without waiving its governmental immunity, each Party to this Agreement agrees to hold harmless each other, its governing board, officers, agents and employees for any liability, loss, damages, claims or causes of action caused, or asserted to be caused, directly or indirectly by any other Party to this Agreement, or any of its officers, agents or employees as a result of its performance under this Agreement.

CONSENT TO SUIT: COLLEGE STATION expressly acknowledges TAMU is an agency of the State of Texas and TAMU expressly acknowledges COLLEGE STATION is a Texas municipality. Nothing in this Agreement will be construed as a waiver or relinquishment by TAMU or COLLEGE STATION of its right to claim such exemptions, privileges and immunities as may be provided by law. Neither COLLEGE STATION nor TAMU, by entering into this Agreement, gives its consent to suit.

5.04 Waiver: No waiver by TAMU or COLLEGE STATION of any default or breach of any term, condition, or covenant of this Agreement will act as a waiver of any future breach.

5.05 State Privileges and Immunities: COLLEGE STATION expressly understands and accepts that TAMU is a member of THE TEXAS A&M UNIVERSITY SYSTEM, an agency of the State of Texas, and that nothing in this Agreement will act as a waiver or relinquishment by TAMU, THE TEXAS A&M UNIVERSITY SYSTEM, and/or the State of Texas, of any right, exemption, privileges and/or immunities that may be provided by law.

5.06 Municipality Privileges and Immunities: TAMU expressly understands and accepts that COLLEGE STATION is a Texas Home-Rule Municipal Corporation and a political subdivision of the State of Texas, and that nothing in this Agreement will act as a waiver or relinquishment by COLLEGE STATION, of any right, exemption, privileges and/or immunities that may be provided by law.

5.07 Governing Law: This Agreement is governed by the laws of the State of Texas, and venue is expressly agreed upon in Brazos County, Texas.

5.08 Grammatical Interpretation: Whenever the singular is used it includes the plural, and the masculine gender includes the feminine and neuter gender.

5.09 Headings: Headings are for reference only and will not be construed to limit or alter the meaning of any provisions of this Agreement.

5.10 Entire Agreement: This Agreement constitutes the entire agreement between **TAMU** and **COLLEGE STATION** relating to the surface use of HENSEL PARK, and will not be explained, modified, or contradicted by any prior or contemporaneous negotiations, representations, or agreements, either written or oral. This Agreement can only be amended by a subsequent, written document, mutually agreed upon by **TAMU** and **COLLEGE STATION**.

5.11 Parties Bound: This Agreement is binding upon and inures to the benefit of **TAMU** and **COLLEGE STATION** and their respective successors in interest or office and any approved assigns (however, this Section does not constitute permission for an assignment).

5.12 Savings Clause: Should any clause in this Agreement be found invalid by a court of law, the remainder of this Agreement will not be affected, and all other provisions in this Agreement will remain valid and enforceable to the fullest extent permitted by law.

5.13 Force Majeure: Neither **TAMU** nor **COLLEGE STATION** is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of either **TAMU** or **COLLEGE STATION**, and which by due diligence is unpreventable.

5.14 Authority to Enter Contract: Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective organizations.


5.15 Agreement Read: The Parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.

ARTICLE 6 **DISPUTE RESOLUTION**

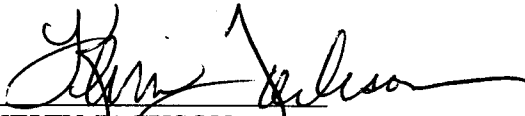
6.01 Dispute Resolution: Any dispute between **TAMU** and **COLLEGE STATION** regarding this Agreement will be governed by Texas Government Code, Chapter 2009, "Alternative Dispute Resolution for Use by Governmental Bodies", and any applicable Model Rules promulgated by the Office of the Attorney General, the State of Texas.

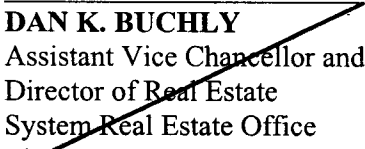
EXECUTED in duplicate originals, this _____ day of _____, 2003, by
TAMU, by its duly authorized officer.

"TAMU"
TEXAS A&M UNIVERSITY


BY: 
RICHARD L. FLOYD
Associate Vice President for Finance

RECOMMEND APPROVAL:


KEVIN JACKSON
Director
Department of Student Activities


DAN K. BUCHLY
Assistant Vice Chancellor and
Director of Real Estate
System Real Estate Office
The Texas A&M University System

APPROVED AS TO FORM:


RAYNI C. LAY
Staff Attorney
Office of General Counsel
The Texas A&M University System

EXECUTED in duplicate originals, this _____ day of _____ 2003, by **COLLEGE STATION**, by its duly authorized officer.

"COLLEGE STATION"
THE CITY OF COLLEGE STATION

BY: _____
RON SILVIA Mayor

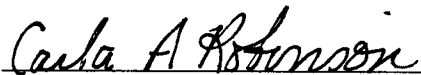
ATTEST:

CONNIE HOOKS, City Secretary

APPROVED:

THOMAS E. BRYMER
City Manager, City of College Station

Date



City Attorney, City of College Station

Date

CHARLES CRYAN
Director of Fiscal Services
City of College Station

Date

STATE OF TEXAS

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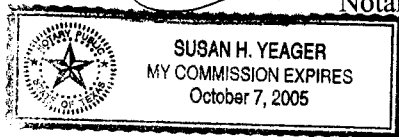
ACKNOWLEDGMENT

COUNTY OF BRAZOS

BEFORE ME, the undersigned authority a Notary Public for the State of Texas, on this day personally appeared **RICHARD L. FLOYD**, Associate Vice President for Finance, Texas A&M University, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed it as the act and deed of Texas A&M University, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVE UNDER MY HAND AND SEAL OF OFFICE this 16th day of May, 2003.

My Commission Expires:



Susan H. Yeager
Notary Public, State of Texas

STATE OF TEXAS

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§
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ACKNOWLEDGMENT

COUNTY OF BRAZOS

BEFORE ME, the undersigned authority, a Notary Public for the State of Texas, on this day personally appeared **RON SILVIA**, in his capacity as Mayor of the City of College Station, a Texas Home Rule Municipal Corporation, on behalf of said municipality, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed it for the purposes and consideration therein expressed, and in the capacity state in such instrument.

GIVE UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2003.

My Commission Expires:

Notary Public, State of Texas

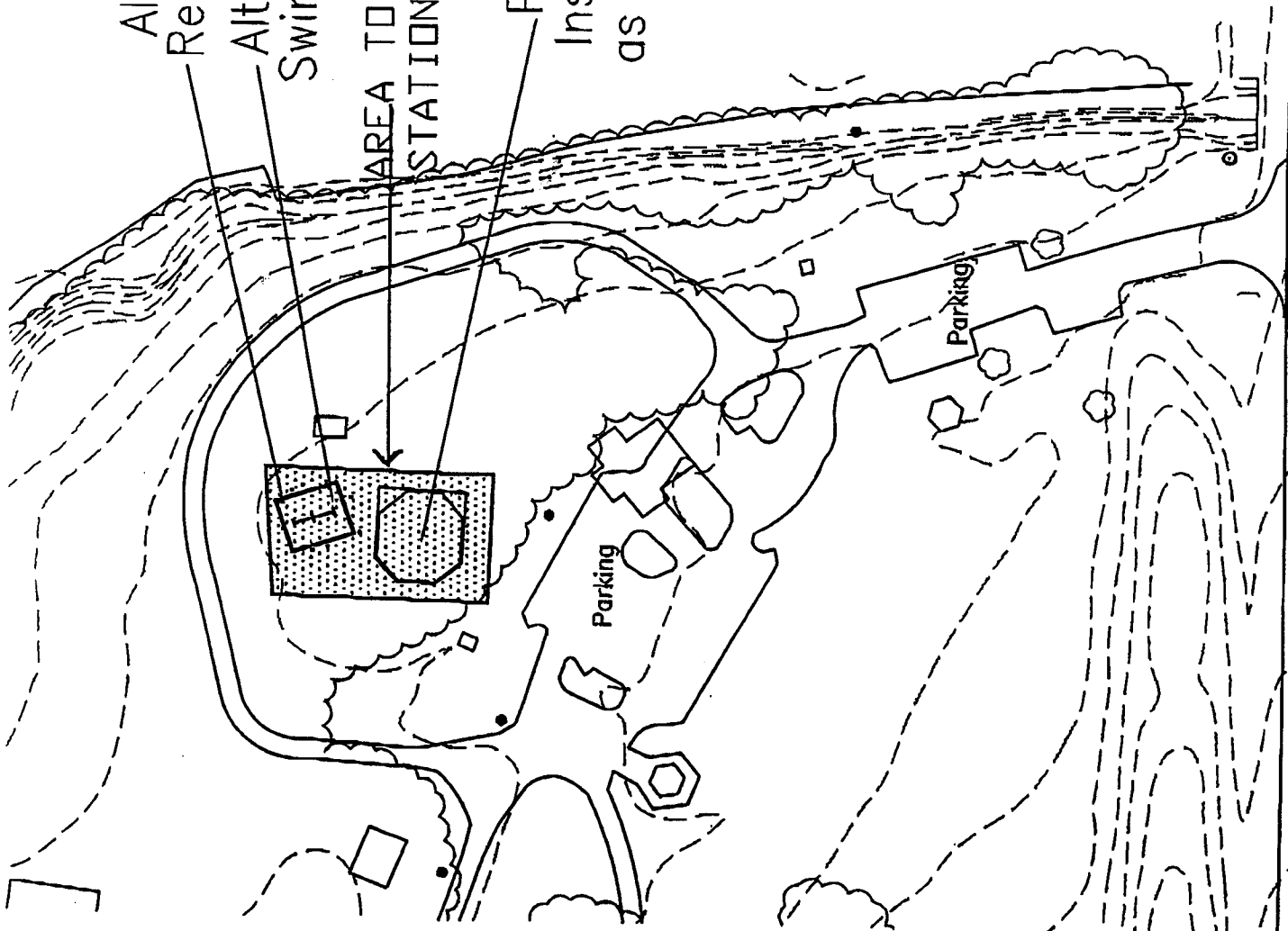
EXHIBIT A

Property Description

Alternate #1
Remove 1 exist. Post oak tree
Alternate #1
Swingset as per details

AREA TO BE MAINTAINED BY CITY OF COLLEGE
STATION PARKS & RECREATION DEPARTMENT

Remove existing
Playground & Gravel
Install new playground
as per detail this sheet



COLLEGE AVE.

EXHIBIT B

Depreciated Payment Schedule Upon Termination

Termination Within	Percentage of Value
1 year	100%
2 years	90%
3 years	80%
4 years	70%
5 years	60%
6 years	50%
7 years	40%
8 years	30%
9 years	20%
10 years	10%